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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/560,624

06/08/2006

Abhay Arun Bhagwat

J2073(C)

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UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

BAINBRIDGE, ANDREW PHILIP

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/560,624 | BHAGWAT, ABHAY ARUN | |
| | Examiner | Art Unit | |
| | ANDREW BAINBRIDGE | 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/9/2006, 2/12/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **the following elements must be shown in the drawings:** A) an outlet from valves 4-7 to the outside of the container must be shown (how does the material get outside element 8?) B) the means that the “cap” or “cover” 8 is attached to the device must be shown (is it a screw cap?, is it a cap at all?) C) a cross section of the partition showing that the partition is wider than the cross sections of the individual compartments must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New

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Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **elements 5 and 7-8 of the drawings are not described in the specification**. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 1-4 are rejected under 35 U.S.C. 103(a)** as being unpatentable over WO 03/006320 (Chan et al.).

6. Chan in figures 1-16 discloses a hand held multi-compartment dispenser 10 with a deformable outer container wall 12-13 with tow mutually separate compartments 30, 40 (page 6, paragraph 2) to store two types of materials with different viscosities, with an elastic partition in between 50 that is equal to the cross-sectional area of the partition 50 (see figure 2) with a discharge aperture 60 for each compartment that is designed based upon consideration to the viscosity rheology characteristics of the fluid being dispensed from the individual compartments (page 6, paragraphs 2-3). Chan does not explicitly state that the apertures are adapted to be an area proportional to the resistance to the flow raised to the exponent whose value is greater than zero in order to properly control the ratio of materials dispensed from each compartment, it is inherent in the design of the valves for both compartments in Chan 60 to take those factors into consideration. It would be obvious to one of ordinary skill in the art to create valves for each compartment that created a predictable ratio of flow from both compartments because that is the entire purpose of the Chan device (page 6 paragraph 3).

7. **Claim 5 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Chan as applied in claim 1 in view of US 5,076,464 (Simon).

8. Chan as applied in claim 1 has all of the elements of claim 5 except for a partition that is of corrugated shape. Simon in figure 1-3 teaches a partition for a dual compartment container with a corrugated partition wall 8-9. It would be obvious to one of ordinary skill in the art to adapt Simon to Chan because Simon teaches a way to allow the partition to flex and bend and “give” without the danger of the partition becoming overstressed and damaged, which can only improve the reliability of the device.

9. **Claim 6 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Chan as applied in claim 1 in view of US 6,283,316 (Sherman).

10. Chan as applied in claim 1 has all of the elements of claim 6 except for a plurality of elastic partitions. Sherman in figures 3-4 teaches a container with three or four apertures for the three or four corresponding compartments of the container, each separated by a partition 20, 30. It would be obvious to one of ordinary skill in the art to adapt Sherman to Chan to create a device with several partitions for several compartments because that would allow the resulting device to have even more materials dispensed at the same time.

11. **Claim 7 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Chan as applied in claim 1 in view of US 2,564,359 (Fuller).

12. Chan as applied in claim 1 has all of the elements of claim 7 except for the deformable outer walls being not collapsible. Fuller in figures 1-5 teaches a dispensing

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container with a resilient plastic outer wall 10 that is squeezable but always retains its shape after the squeezing ends. It would be obvious to one of ordinary skill in the art to adapt Fuller to Chan because Fuller teaches a way to keep a container in the same shape for every squeeze which can only increase the consistency of the dispensation activity.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday through Friday, 9 AM to 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. B./
Examiner, Art Unit

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754